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Attorneys for BP America, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITE HERE NATIONAL RETIREMENT FUND, )  
et al., Derivatively On Behalf of BP p.l.c., )  
BP AMERICA INC., BP OIL CO. INC. )  
and BP EXPLORATION (ALASKA) INC., )

Plaintiffs,

vs.

THE LORD JOHN BROWNE OF MADINGLEY, )  
IAN M.G. PROSSER, PETER D. SUTHERLAND, )  
BYRON E. GROTE, ANTHONY B. HAYWARD, )  
JOHN A. MANZONI, DAVID C. ALLEN, IAIN C. )  
CONN, JOHN H. BRYAN, ERROLL B. DAVIS, JR., )  
WALTER E. MASSEY, H. MICHAEL P. MILES, )  
MICHAEL H. WILSON, DEANNE S. JULIUS, )  
THOMAS F.W. McKILLOP, ANTONY )  
BURGMANS, DOUGLAS J. FLINT, WILLIAM M. )  
CASTELL, ROBERT A. MALONE, ROSS J. )  
PILLARI, STEPHEN MARSHALL, DEBRA A. )  
PLUMB, DEBRA A. DOWLING, IAN SPRINGETT, )  
DANIEL B. PINKERT, NEIL R. McCLEARY, )  
PAULA J. CLAYTON, ALASTAIR M. GRAHAM, )  
CHRIS J. PHILLIPS, STANLEY P. PRESLEY, )  
ROBIN B. NICHOLSON, CHARLES F. KNIGHT, )  
FLORIS A. MALJERS, RICHARD L. OLVER, )

Case No. 3:06-cv-\_\_\_\_\_

**NOTICE OF REMOVAL OF  
ACTION TO THE UNITED  
STATES DISTRICT  
COURT FOR THE  
DISTRICT OF ALASKA**

[Caption continued on following page.]

*Unite Here National Retirement Fund, et al v. Browne, et al*  
Notice of Removal of Action to the U.S. District Court  
For the District of Alaska

Case No. 3:06-cv-\_\_\_\_\_  
Page 1 of 10

RODNEY F. CHASE, JOHN G.S. BUCHANAN,	)
RICHARD C. WOOLLAM and WILLIAM	)
DOUGLAS FORD,	)
	)
Defendants.	)
	)
-and-	)
	)
BP p.l.c., BP AMERICA INC., BP OIL CO. INC.	)
and BP EXPLORATION (ALASKA) INC.,	)
	)
Nominal Defendants.	)
	)

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Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, nominal defendant BP America Inc. files this Notice of Removal to remove this civil action from the Superior Court for the State of Alaska, Third Judicial District at Anchorage, to the United States District Court for the District of Alaska. The grounds for removal are as follows:

1. On or about October 2, 2006, plaintiffs UNITE HERE National Retirement Fund and Jeffrey Pickett commenced this action in the Superior Court for the State of Alaska, Third Judicial District at Anchorage. On October 9, 2006, plaintiffs filed an amended complaint ("Am. Compl.") that added an additional plaintiff, London Pensions Fund Authority.

2. Plaintiffs served defendant Marshall and nominal defendant BP Exploration (Alaska) Inc. on October 5, 2006. On October 13, 2006, plaintiffs served defendants Davis and Pillari and nominal defendant BP America Inc., and plaintiffs served defendant Ford on October 15, 2006 and defendant Chase on October 16, 2006.

On October 17, 2006, plaintiffs served defendants Knight, Plumb and Woollam. And on October 18, 2006, plaintiffs served defendants Allen, Browne, Conn, Grote and Hayward and nominal defendant BP p.l.c. Defendant Pinkert was served on October 19, 2006 and defendant Dowling was served on October 21, 2006.

3. The complaint purports to bring a derivative action on behalf of BP p.l.c. against the current Board of Directors of BP p.l.c., among many others, for alleged breaches of fiduciary duties and waste of corporate assets. (Am. Compl. ¶ 1.) It also purportedly names three United States subsidiaries of BP p.l.c. as nominal defendants. The complaint broadly alleges violations of “the laws of the United States and several of its states relating to environmental regulation and protection, worker and workplace safety and fair and honest trade practices.” (*Id.*) The alleged breaches of fiduciary duty relate to a diverse multitude of events, including an explosion at an oil refinery in Texas, a shutdown of a pipeline in Alaska and BP’s commodities trading operations in Chicago.

4. This Court has original jurisdiction over this action under 28 U.S.C. § 1332 based on diversity of citizenship.

5. With the exception of certain fraudulently joined defendants and nominal defendants,<sup>1</sup> there is complete diversity between plaintiffs and all named defendants.

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<sup>1</sup> The fraudulently joined defendants are BP Exploration (Alaska) Inc., Steve Marshall, Neil R. McCleary and Chris J. Phillips. Defendants Marshall, McCleary and Phillips are current or former directors and officers of BP Exploration (Alaska), Inc. Each fraudulently joined defendant is alleged to be a citizen of Alaska.

(a) Plaintiff UNITE HERE National Retirement Fund is, on information and belief, a citizen of New York.

(b) Plaintiff London Pensions Fund Authority is, on information and belief, a citizen of the United Kingdom.

(c) Plaintiff Jeffrey Pickett is alleged to be a citizen of Alaska.

(d) Nominal Defendant BP p.l.c. is a United Kingdom corporation.

(e) Nominal Defendant BP America Inc. is a Delaware corporation with its principal place of business in Illinois. BP America Inc. is a subsidiary of BP p.l.c.

(f) Nominal Defendant BP Oil Co. Inc. is alleged to be a citizen of Illinois.<sup>2</sup>

(g) Defendant Peter D. Sutherland is a citizen of the United Kingdom.

(h) Defendant Lord John Browne of Madingley is a citizen of the United Kingdom.

(i) Defendant Ian Prosser is a citizen of the United Kingdom.

(j) Defendant Byron E. Grote is a citizen of the United Kingdom.

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<sup>2</sup> BP America Inc. notes that there is no BP p.l.c. subsidiary in existence named “BP Oil Co. Inc.”

(k) Defendant Anthony B. Hayward is a citizen of the United Kingdom.

(l) Defendant John A. Manzoni is a citizen of the United Kingdom.

(m) Defendant David C. Allen is a citizen of the United Kingdom.

(n) Defendant Iain C. Conn is a citizen of the United Kingdom.

(o) Defendant John H. Bryan is a citizen of Illinois.

(p) Defendant Erroll B. Davis, Jr. is a citizen of Georgia.

(q) Defendant Walter E. Massey is a citizen of Georgia.

(r) Defendant DeAnne S. Julius is a citizen of the United Kingdom.

(s) Defendant Thomas McKillop is a citizen of the United Kingdom.

(t) Defendant Antony Burgmans is a citizen of the Netherlands.

(u) Defendant Douglas J. Flint is a citizen of the United Kingdom.

(v) Defendant William M. Castell is a citizen of the United Kingdom.

(w) Defendant Michael P. Miles is a citizen of the United Kingdom.

(x) Defendant Michael H. Wilson is a citizen of Canada.

(y) Defendant Robin B. Nicholson is a citizen of the United Kingdom.

(z) Defendant Charles F. Knight is a citizen of Missouri.

(aa) Defendant Floris A. Maljers is a citizen of the Netherlands.

(bb) Defendant Richard L. Olver is a citizen of the United Kingdom.

(cc) Defendant Rodney F. Chase is a citizen of Florida.

(dd) Defendant John G.S. Buchanan is a citizen of the United Kingdom.

(ee) Defendant William Douglas Ford is a citizen of Florida.

(ff) Defendant Robert A. Malone is a citizen of Texas.

(gg) Defendant Ross J. Pillari is a citizen of Florida.

(hh) Defendant Debra A. Plumb is a citizen of Illinois.

(ii) Defendant Debra A. Dowling is a citizen of Illinois.

(jj) Defendant Ian Springett is a citizen of the United Kingdom.

(kk) Defendant Daniel B. Pinkert is a citizen of Illinois.

(ll) Defendant Paula J. Clayton is a citizen of Illinois.

(mm) Defendant Alastair Graham is a citizen of the United Kingdom.

(nn) Defendant Stanley P. Presley is a citizen of Texas.

(oo) Defendant Richard C. Woollam is a citizen of Texas.

6. Nominal defendant BP Exploration (Alaska) Inc. is another subsidiary of BP p.l.c. Defendants Steve Marshall, Neil R. McCleary and Chris J. Phillips are current or former directors and officers of BP Exploration (Alaska) Inc. The citizenship of these individual defendants and nominal defendant BP Exploration (Alaska) Inc. should be disregarded for purposes of determining jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441(b) because these defendants were fraudulently joined in an attempt to defeat diversity jurisdiction. *See Lee v. Lehigh Valley Co.*, 267 U.S. 542 (1925). A defendant is fraudulently joined when there is no possibility that plaintiffs can maintain a cause of action against that defendant. *See, e.g., Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1068 (9th Cir. 2001); *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). That is the case with respect to the fraudulently joined defendants in this action.

7. Plaintiffs allege that they own stock and ADRs of BP p.l.c., a corporation formed under the laws of England and Wales. Because plaintiffs seek to sue derivatively on behalf of BP p.l.c., their standing to assert derivative claims is governed by English law. *See Batchelder v. Kawamoto*, 147 F.3d 915, 920 (9th Cir. 1998). Plaintiffs do not allege that they own any stock of BP Exploration (Alaska) Inc. Under English law, plaintiffs' alleged ownership of stock of BP p.l.c. does not give them standing to sue derivatively on behalf of subsidiaries of BP p.l.c. such as BP Exploration (Alaska) Inc. Nor do plaintiffs have standing under English law, as (alleged) shareholders of BP p.l.c., to assert derivative claims against current or former officers and

directors of BP Exploration (Alaska) Inc., such as defendants Marshall, McCleary and Phillips. Because plaintiffs cannot assert derivative claims on behalf of or against these defendants under governing English law, plaintiffs cannot possibly maintain this derivative action against them, and the citizenship of these fraudulently joined defendants should be disregarded for purposes of determining whether there is complete diversity.

8. Although the complaint does not recite a specific damages claim, the amount in controversy here exceeds \$75,000. Among other things, the complaint seeks money damages against all defendants, jointly and severally, for allegedly “expos[ing] BP to tens of millions of dollars in damages [and] potentially hundreds of millions of dollars in remedial costs[.]” (Am. Compl. ¶ 5.)

9. BP America Inc. is filing this Notice of Removal within thirty (30) days of October 5, 2006, the earliest date on which any defendant was served with the complaint. Accordingly, removal of this action is timely under 28 U.S.C. § 1446(b).

10. As indicated in the Notices of Consent to Removal (filed contemporaneously herewith), all defendants served to date consent to removal of this action.

11. True and correct copies of the pleadings in this action are attached to the accompanying document entitled “List of Documents from the File in State Court Case No. 3AN-06-11929 Civ.”

12. Written notification of the filing of this Notice of Removal is being served on plaintiffs’ counsel on this date.



13. A true and correct copy of this Notice of Removal (without exhibits) will be filed on this day with the Superior Court for the State of Alaska, Third Judicial District Superior Court at Anchorage.

WHEREFORE, BP America Inc. hereby removes this civil action from the Superior Court for the State of Alaska, Third Judicial District at Anchorage, to this Court.

Dated: October 24, 2006.  
Anchorage, Alaska.

By: /s/ Jeffrey M. Feldman

Jeffrey M. Feldman

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*Attorneys for Nominal Defendant  
BP America, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
Notice of Removal of Action to the United  
States District Court for the District of Alaska  
was served by mail to:

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By /s/ Jeffrey M. Feldman  
Dated: 10/24/06